

1 The Honorable Barbara J. Rothstein  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
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15 COVINGTON 18 PARTNERS, LLC,  
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17 Plaintiff,  
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19 vs.  
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21 LAKESIDE INDUSTRIES, INC. et al.,  
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23  
24 Defendants.  
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No.: 2:19-cv-000253 BJR

100 THIRD-PARTY DEFENDANTS  
101 FIDELITY NATIONAL TITLE INSURANCE  
102 COMPANY AND FIDELITY NATIONAL  
103 TITLE OF WASHINGTON, INC.'S,  
104 PRETRIAL STATEMENT

105 Pursuant to LR 16(i), third-party defendants Fidelity National Title Insurance Company  
106 and Fidelity National Title of Washington, Inc. (collectively "Fidelity") serve this Pretrial  
107 Statement on third-party plaintiff Attu, LLC.

108 1. Federal Jurisdiction.

109 This court does not have jurisdiction because there are no pending claims against the  
110 Bonneville Power Administration ("BPA") now that the court has granted plaintiff's Motion for  
111 Summary Judgment and resolved all issues involving the BPA. The only remaining claims are  
112 Attu's state causes of action against Fidelity. Attu does not assert any independent jurisdictional  
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1 basis that establishes jurisdiction. Supplemental jurisdiction is not warranted because none of the  
 2 factors stated in 28 U.S.C. § 1337 apply.

3       2.     Affirmative Defenses and Claims.

4       Fidelity intends to assert and pursue all affirmative defenses at trial, including: that this  
 5 court lacks jurisdiction; Attu fails to state a cause of action; Attu is not an insured under the title  
 6 insurance policy; Washington does not recognize third-party insurance claims; Attu lacks  
 7 standing; all title work was done for the benefit of the buyer; the easement at issue was  
 8 unrecorded; and Attu cannot establish negligent title work. Fidelity does not assert any  
 9 counterclaims, and is not seeking affirmative relief other than the award of attorneys' fees and  
 10 costs.

11       3.     Objections to third-party plaintiff's Statement of Issues of Law.

12       Beyond Jurisdiction, issues of law include whether RCW 19.86.020 applies; whether  
 13 Fidelity owed any duty to Attu other than to fulfill the parties' joint escrow instructions; whether  
 14 Attu is entitled to assert its claims; whether Attu may assert a negligence claim; and whether  
 15 Attu may assert any damages.

16       4.     Witnesses.

17       Paul Kemp  
 18       c/o Mark E. Bardwil, WSBA #24776  
 19       MARK E. BARDWIL, P.S.  
 20       615 Commerce Street, Suite 102  
 21       Tacoma, Washington 98402  
 22       Telephone: (253) 383-7123  
 23       [meb@markbardwil.com](mailto:meb@markbardwil.com)  
 24       Attorney for Covington Land, LLC

25       Mr. Kemp may testify as to the underlying transaction.

Walter Miles  
c/o Mark E. Bardwil, WSBA #24776  
MARK E. BARDWIL, P.S.  
615 Commerce Street, Suite 102  
Tacoma, Washington 98402  
Telephone: (253) 383-7123  
[meb@markbardwil.com](mailto:meb@markbardwil.com)  
Attorney for Covington Land, LLC

Mr. Miles may testify as to the underlying transaction.

Corporate representative  
Fidelity National Title Insurance Company  
c/o Henry K. Hamilton, WSBA #16301  
Fidelity National Law Group  
701 – 5th Avenue, Suite 2710  
Seattle, WA 98104  
Phone: (206) 224-6001  
[henry.hamilton@fnf.com](mailto:henry.hamilton@fnf.com)

A corporate representative will testify as to the file records, scope of work, nature of the work, work performed and quality of the work.

Cindy Foley or corporate representative  
Fidelity National Title of Washington, Inc.  
c/o Henry K. Hamilton, WSBA #16301  
Fidelity National Law Group  
701 – 5th Avenue, Suite 2710  
Seattle, WA 98104  
Phone: (206) 224-6001  
[henry.hamilton@fnf.com](mailto:henry.hamilton@fnf.com)

Cindy Foley or a corporate representative will testify as to the file records, scope of work, nature of the work, work performed and quality of the work.

## 5. Exhibits.

Fidelity intends to offer the Declarations and other documents in the court file. Fidelity reserves the right to use those records identified in Attu's submission, and use additional documents for rebuttal or impeachment purposes.

6. Deposition Transcripts.

Fidelity does not intend to offer any deposition records.

DATED this 24th day of August, 2020.

## FIDELITY NATIONAL LAW GROUP

/s/ Henry K. Hamilton  
Henry K. Hamilton, WSBA #16301  
Fidelity National Law Group  
701 – 5<sup>th</sup> Avenue, Suite 2710  
Seattle, WA 98104  
Phone: (206) 224-6001  
Fax: (206) 223-4527  
Email: [Henry.Hamilton@fnf.com](mailto:Henry.Hamilton@fnf.com)

*Attorneys for Third-Party defendants Fidelity National Title Insurance Company and Fidelity National Title of Washington, Inc.*